

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JEFFREY P. BERTELSEN and AMY L.	)	
BERTELSEN, husband and wife, and	)	NO. CV-04-5135-LRS
the marital community comprised	)	
thereof; BERTELSEN FOOD & GAS,	)	PROTECTIVE ORDER
INC., a Washington corporation;	)	
and DR. RICHARD BERTELSEN and	)	
JANIS JO BERTELSEN, husband and	)	
wife, and the marital community	)	
comprised thereof,	)	
	)	
Plaintiffs,	)	
	)	
-vs-	)	
	)	
ROGER K. HARRIS; ROGER K.	)	
HARRIS, PC, an Oregon	)	
Professional Services	)	
Corporation; HARRIS BERNE	)	
CHRISTENSEN, LLP, an Oregon	)	
Limited Liability Partnership;	)	
and RONALD E. McPHERSON,	)	
	)	
Defendants.	)	

On October 19, 2005, the parties in the above referenced matter filed a stipulation to the entry of a protective order (Ct. Rec. 23). The Court interprets this pleading as a joint motion for the entry of a protective order. Good cause appearing, the Court hereby GRANTS said motion and pursuant to the stipulation of the parties enters the following protective order:

1                                   **I. PROCEDURES AND DEFINITIONS**

2   **1. Confidential Information.**

3           A producing party, including the parties to this litigation and any  
4 third-party discovery respondent, may designate as "Confidential", by  
5 stamping or other appropriate means, any document, thing, material or  
6 testimony that the producing party in good faith believes contains or  
7 reveals confidential, sensitive, proprietary, commercial or financial  
8 information ("Confidential Information").  
9

10   **2. Access to Confidential Information.**

11           Confidential Information so designated, and information derived  
12 therefrom, will not be disclosed to or used by anyone except the  
13 following persons, and by these persons solely for purposes of this  
14 litigation.

- 15           a. The parties and their officers, directors, employees and  
16 representatives who have need for such information for purposes  
of this litigation;
- 17           b. Designated legal counsel for the receiving party in this  
18 litigation and their respective legal assistants and  
19 stenographic and clerical staff, as well as outside copying,  
20 graphic and computer personnel performing services in  
conjunction with the litigation;
- 21           c. Outside experts and consultants retained by any of the parties  
22 who have a need for such information to assist in this  
litigation, so long as:
- 23               (i) The conditions set forth in ¶6 below have been satisfied;
- 24               (ii) Said outside expert or consultant is not an officer,  
25 director, shareholder, employee or agent of a competitor  
to either party;
- 26           d. During deposition, to any deposition witness where necessary  
to the testimony of such witness;

- 1 e. The Court, jury, court personnel, court reporters, and similar  
2 personnel; or  
3  
4 f. Any other person with the prior written consent of the  
5 designating party.  
6

7 **3. Prior Knowledge.**

8 Nothing herein shall restrict any individual from reviewing any  
9 Confidential Information that he or she has previously authored, received  
10 or reviewed.

11 **II. CONSENT TO BE BOUND**

12 **4. Non-Disclosure Certificate.**

13 Prior to receiving, being shown or using Confidential Information,  
14 persons falling in the categories set forth in ¶2 above, other than those  
15 listed in ¶2(e), shall be informed of the existence of this Stipulation  
16 and Protective Order, be provided with a copy thereof and be instructed  
17 that such matter may not be used other than in connection with this  
18 litigation and may not be disclosed to anyone other than those persons  
19 covered by this Stipulation and Order.  
20

21 Each individual, except counsel and counsel's stenographic and  
22 clerical staff, and outside litigation services personnel to whom  
23 Confidential Information is to be disclosed as provided for in ¶2 above,  
24 and other than those listed in ¶2(e) above, shall, prior to such  
25 disclosure, acknowledge in writing in the form of the acknowledgment  
26 attached hereto as Exhibit A (the "Acknowledgment") that he or she has

1 been informed or and agrees to be bound by this Stipulation and  
2 Protective Order. For persons listed in ¶2(d) above, acknowledgment of  
3 this Stipulation and Protective Order and agreement to be bound by its  
4 terms may be mad verbally on the record during the deposition. Counsel  
5 for the party providing the designated matter to such individual shall  
6 retain the original of all such Acknowledgments. It shall be the  
7 obligation of such party and its counsel to obtain such Acknowledgments  
8 prior to any disclosure of Confidential Information, and to retain them  
9 until the conclusion of this litigation. Counsel shall furthermore  
10 assure that their stenographic, clerical staff and outside litigation  
11 services personnel complies with the terms of this Stipulation and  
12 Protective Order.  
13

14 **5. Use at Depositions.**

15 Confidential Information, and all information contained derived  
16 therefrom, may be used or referred to at depositions, or marked as  
17 deposition exhibits, in accordance with the provisions of this  
18 Stipulation and Protective Order. Any Confidential documents marked as  
19 deposition exhibits shall be sealed separately from the remainder of the  
20 deposition transcript and exhibits. When a party uses or refers to  
21 Confidential documents or information at a deposition, the portion of the  
22 deposition transcript that relates to such documents or information shall  
23 be stamped Confidential and sealed separately from the remainder of the  
24 transcript, and shall be treated as Confidential under the provisions of  
25 this Order.  
26

1   **6. Designating Portions of Deposition Transcripts Confidential.**

2       Any party or nonparty deponent may, within 15 days after receiving  
3 a deposition transcript, designate portions of the transcript, or  
4 exhibits thereto, as being Confidential. At the deposition, the parties  
5 will attempt in good faith preliminarily to identify and designate  
6 Confidential testimony and exhibits without prejudice to their right to  
7 so designate other testimony or exhibits or to withdraw such designation  
8 after receipt of the transcript. Confidentiality designations of  
9 deposition testimony or exhibits may be made by stamping the exhibits  
10 Confidential or by underlining the portions of the pages that are so  
11 designated and stamping such pages Confidential. Until expiration of the  
12 15-day period, the entire deposition transcript, all exhibits thereto,  
13 shall be treated as Confidential under the provisions of this Order. If  
14 no party or nonparty deponent asserts a timely confidentiality  
15 designation regarding testimony or exhibits from a deposition, none of  
16 the deposition testimony or exhibits will be treated as confidential.  
17 If a timely confidentiality designation is made, the designated testimony  
18 and exhibits shall be sealed separately from the testimony and exhibits  
19 so marked, and shall be treated as confidential under the provisions of  
20 this Order.  
21

22   **7. Use During Motions Practice.**

23       In the event that a party wishes to use any Confidential Information  
24 in the affidavits, briefs, memoranda or other papers filed with the Court  
25 in this action, such filings shall be enclosed in a sealed envelope or  
26

1 other appropriate container designating the confidential nature of the  
2 contents. Such Confidential Information used therein shall be maintained  
3 under seal by the Clerk of the Court.

### 4 **III. CHALLENGE TO DESIGNATIONS**

#### 5 **8. Notification and Challenge.**

6 If any of the parties challenges any confidentiality designation,  
7 that party shall notify all parties and, if the designation is by a  
8 nonparty, such nonparty, each of whom shall thereafter engage in good  
9 faith discussions to resolve any challenge to confidentiality  
10 designations. If, after such good-faith discussions and no sooner than  
11 five days after providing notice, any dispute regarding confidentiality  
12 designations has not been resolved, the challenging party may move the  
13 Court for an order permitting disclosure under a lesser or no  
14 confidentiality designation. All interest parties shall make best  
15 efforts to resolve such disagreements as to confidentiality before  
16 submitting them to the Court.  
17

#### 18 **9. Effect on Restriction.**

19 If a motion is filed challenging any confidentiality designation,  
20 the provisions of this Stipulation and Protective Order shall apply to  
21 the Confidential Information until the motion is decided.  
22

### 23 **IV. OTHER PROVISIONS**

#### 24 **10. Use by Producing Party.**

25 Nothing in this stipulation and Protective Order shall prevent or  
26

1 limit any of the parties from using or disclosing its own Confidential  
2 Information for any purpose.

3 **11. Filing Under Seal.**

4 All documents filed with the Court that contain Confidential  
5 Information shall be filed under seal.

6 **12. Use in Court.**

7 In the event that any Confidential Information is used in any court  
8 proceeding in this action, it shall not lose its confidential status  
9 through such use, and the party using such matter shall take all steps  
10 reasonably available to protect its confidentiality during such use.

11 **13. No Admission or Waiver.**

12 This Stipulation and Protective Order is entered into solely for the  
13 purpose of facilitating the exchange of documents and information between  
14 the parties to this action without involving the Court unnecessarily in  
15 the process. Nothing in this Stipulation and Protective Order or the  
16 production of any information, thing, material or document under the  
17 terms of this Order shall be deemed to have the effect of an admission  
18 or waiver by either party or of altering the confidentiality or non-  
19 confidentiality of any such document or information or of altering any  
20 existing obligation of any party in the absence thereof.

21 The inadvertent or unintentional disclosure by the producing part  
22 of Confidential Information, regardless of whether the information was  
23 so designated at the time of disclosure, shall not be deemed a waiver in  
24 whole or in part of the claim of confidentiality either as to the  
25  
26

1 specific information disclosed or as to any other information relating  
2 thereto or on the same related subject matter.

3 **14. Notice of Request.**

4       If a person or entity in any proceeding other than this action  
5 serves on a party hereto a governmental demand (e.g. subpoena duces tecum  
6 or document request) for Confidential Information, the recipient of the  
7 demand shall immediately notify the applicable producing (or otherwise  
8 designating) party(ies) and shall notify the requesting party that such  
9 materials are covered by this Stipulation and Protective Order. If any  
10 producing or designating party objects to the disclosure of its  
11 Confidential Information, then within ten (10) days of receiving such  
12 notice, but no more than two (2) business days prior to the date for  
13 compliance under the governmental demand, the objecting party shall  
14 advise the subpoenaed party of its objection to disclosure. The  
15 subpoenaed party will then provide the notice required by the applicable  
16 civil rules. If timely notice is not received from the producing party,  
17 then the subpoenaed party shall be free to make the disclosure. If  
18 timely objection is made, then the objecting party shall have the burden  
19 of moving or responding to any appropriate demands for relief and will  
20 hold the subpoenaed party harmless for any costs or fees incurred as a  
21 result of this provision. In such cases, the subpoenaed party shall not  
22 make any disclosure until directed otherwise by the applicable court or  
23 other valid order, and nothing herein shall require any party to violate  
24 the terms of the facially valid order.  
25  
26

1 **15. Application to Court.**

2 This Stipulation and Protective Order is without prejudice to the  
3 right of any interested party to apply to the Court for an order  
4 permitting the disclosure of any Confidential Information or to apply for  
5 an order modifying or limiting this Stipulation and Protective Order in  
6 any respect.

7 **16. Trial Use.**

8 The parties hereto agree to negotiate in good faith to preserve  
9 confidentiality matters at trial.

10 **17. Return of Documents.**

11 Upon completion of the litigation and if requested by the producing  
12 party, the original and all copies of all documents produced during  
13 discovery, all interrogatory answers, and all deposition transcripts  
14 containing Confidential Information shall be returned to counsel for the  
15 producing party or destroyed, with the non-producing parties to provide  
16 to counsel for the producing party a certificate reflecting such  
17 disposition.

18 **18. Survival.**

19 This Stipulation and Protective Order shall survive the final  
20 termination of this action and the Court shall retain jurisdiction to  
21 resolve any dispute concerning the use of Confidential Information  
22 disclosed hereunder.

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24 ///

IT IS SO ORDERED.

The District Court Executive is directed to file this Order and provide copies to counsel.

**DATED** this 20th day of October, 2005.

*s/Lonny R. Suko*

LONNY R. SUKO  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A****ACKNOWLEDGMENT**

I certify my understanding that access to confidential documents and/or materials is provided to me pursuant to the terms and restrictions of a Stipulation and Protective Order among the parties to the action *Jeffrey P. Bertelsen, et al v. Roger K. Harris, et al*, U.S District Court, Eastern District, Cause No. CV-04-5135-LRS, dated \_\_\_\_\_, 2005, and that I have been given a copy of, and have read, the Stipulation and Protective Order and agree to be bound by its terms. I understand that the contents of the Confidential documents and/or other materials, and any notes or other memoranda or any other forms of information which copy or disclose the Confidential documents and/or materials, shall not be disclosed to anyone other than in accordance with that Stipulation and Protective Order and shall be used only for the purposes set forth therein.

I agree to be subject to the jurisdiction of the Superior Court of Washington for King County for purposes of enforcement of this Acknowledgment and the Stipulation and Protective Order.

DATED: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)